IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No.149 of 1994

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME-TAX - Applicant(s)
Versus
GIRISHKUMAR SHANTILAL PATEL - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
NOTICE UNSERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI
Date : 05/10/2005
ORAL JUDGMENT
(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)

1. The Income-tax Appellate Tribunal, Ahmedabad Bench 'A' has referred the following question under Section 256(2) of the Income-tax Act, 1961

(the Act) at the instance of the Commissioner of Income-tax:

> "Whether, the Appellate Tribunal is right in law and on facts in deleting the penalty levied by the ITO u/s.271(1)(c) amounting to Rs.108652/-"

2. The Assessment Year 1982-83 and the relevant accounting period is Samvant Year 2037.

3. Heard Mr.M.R.Bhatt, learned Senior Standing Counsel on behalf of the applicant-revenue. The respondent-assessee is not served. However, considering the view that the Court is inclined to take in the matter, it is not necessary to await service.

4. Mr.Bhatt has fairly drawn attention to the order dated 7th August, 2003 passed by this Court in Income Tax Reference No.29 of 1991, whereby in quantum proceedings the order of the Tribunal holding that the transaction in question did not result in taxable capital gains has been upheld. In the circumstances, the cause for which

penalty was levied ceases to exist. The Income-tax Appellate Tribunal was, therefore, right in law and in facts in deleting the penalty levied by the Income Tax Officer under Section 271(1)(c) of the Act.

5. The reference is, accordingly, answered in the affirmative i.e. in favour of the assessee and against the revenue.

6. The reference is disposed of accordingly.

Sd/-
[D.A. MEHTA, J]

Sd/-
[H.N. DEVANI, J]

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*Bhavesh**